

# **STATE OF LOUISIANA**

## **PHASE I OF THE I-12 MANAGED LANES CONVERSION SERVICE CONTRACT PUBLIC-PRIVATE PARTNERSHIP PROJECT**

**EAST BATON ROUGE AND LIVINGSTON PARISHES**

**STATE PROJECT NO. H.012357**

## **SERVICE CONTRACT PUBLIC-PRIVATE PARTNERSHIP PROCUREMENT GUIDELINES**



Louisiana Department of Transportation and Development

TABLE OF CONTENTS

Page

1.0 Introduction..... 1

1.2 Project ..... 1

1.3 Applicability ..... 2

2.0 Definitions..... 2

3.0 Legislative Approval..... 3

4.0 Communications ..... 3

5.0 Procurement Process ..... 4

5.1 Notice of Intent ..... 4

5.2 Request for Proposals ..... 4

5.2.1 Content..... 4

5.2.2 Evaluation Process ..... 5

5.2.3 Basis of Selection..... 5

6.0 Negotiations and Approval ..... 6

6.1 Negotiations ..... 6

6.2 Approval and Execution ..... 6

7.0 Proposal Comment Period ..... 6

7.1 Committee Meeting ..... 6

7.2 Affected Local Jurisdictions ..... 6

7.3 Port Facilities ..... 7

8.0 Conflicts of Interest..... 7

8.1 Participation on More than One Proposer Team..... 7

8.2 Organizational Conflicts of Interest..... 7

8.3 Other Ineligible Firms..... 8

**Louisiana Department of Transportation and Development**

---

9.0 Confidentiality .....8

9.1 Ownership of Documents .....8

9.2 Information Release .....8

9.3 Trade Secrets, Confidential, Privileged, and Proprietary Information .....8

## **1.0 Introduction**

The Louisiana Department of Transportation and Development (“LA DOTD”) establishes these Service Contract Public-Private Partnership Procurement Guidelines (the “Guidelines”) for a Service Contract for the Development and/or Operation of a Qualifying Transportation Facility, pursuant to its authority under Louisiana R.S. 48:250.4 and Louisiana R.S. 48:2084 *et seq.*, for the Phase I of the I-12 Managed Lanes Conversion Service Contract Public-Private Partnership Project (the “Project”).

The LA DOTD is dedicated to conducting the Service Contract PPP procurement in a transparent manner that protects taxpayers, without hindering competition and interest from Private Entities.

These Guidelines take into consideration the following factors identified in Louisiana R.S. 48:2084.13(B), as documented in writing in the presentation to the House and Senate Transportation, Highways, and Public Works Committees on June 11, 2020:

- A) Scope;
- B) Complexity;
- C) Priority of the Project;
- D) Risk sharing;
- E) Added value; and
- F) Increased funding, dedicated revenue source, or other economic benefits that would otherwise be unavailable.

The purpose of these Guidelines is to provide a general overview of the procurement requirements for the Project. Specific procedures to be followed during the procurement, including the submission of Proposals, will be set forth in more detail in the Request for Proposals (“RFP”).

## **1.2 Project**

The Project involves the conversion of the existing inside shoulder of Interstate 12 (“I-12”) to a high occupancy vehicle (“HOV”) lane along both directions from the I-10/I-12 split in East Baton Rouge Parish to east of the I-12/LA 447 interchange in Livingston Parish.

This Project is indicative of the LA DOTD’s policy of committing its funding to implement innovative forms of traffic management. The Development and Operation of the HOV lanes are the first phase of a proposed Interstate corridor management solution, which may ultimately include a high occupancy toll facility. It is not anticipated that the conversion to a full managed lane concept would occur prior to 2024.

The Project may also include an option for annual extensions of the operations and maintenance (“O&M”) period.

### 1.3 Applicability

These Guidelines apply to the proposed Service Contract PPP for the Project for the Development and Operation of new HOV lanes on I-12 between the I-10/I-12 split in East Baton Rouge Parish to east of the I-12/LA 447 interchange in Livingston Parish.

### 2.0 Definitions

The terms listed in this Section 2.0 are defined as follows, unless the context clearly indicates otherwise.

**Affected Local Jurisdiction:** Any parish or municipality in which all or a portion of the Transportation Facility is located.

**Develop or Development:** To plan, design, develop, finance, lease, acquire, install, construct, or expand any portion of a project approved according to the provisions of Louisiana R.S. 48:2084 *et seq.*

**Letter of Interest or LOI:** The response submitted by a Proposer in response to a Notice of Intent (“NOI”).

**Louisiana Department of Transportation and Development or LA DOTD:** The LA DOTD or its representatives.

**Notice of Intent or NOI:** A public announcement inviting prospective Proposers to obtain an RFP and submit a Proposal.

**Operate or Operation:** To finance, maintain, improve, equip, modify, repair, or operate a Qualifying Transportation Facility.

**Principal Participant:** Any of the following entities:

- A) The Proposer;
- B) If the Proposer is a joint venture (JV), partnership, or limited liability company (LLC) created specifically for purposes of proposing on this Project, any joint venturer, partner, or member of the Proposer; and/or
- C) All Persons and legal entities holding (directly or indirectly) a 15% or greater interest in the Proposer.

**Private Entity:** A corporation, limited partnership, general partnership, LLC, JV, business trust, or other business entity.

**Project:** The Phase I of the I-12 Managed Lanes Conversion Service Contract Public-Private Partnership Project.

**Proposal:** The offer submitted by a Proposer in response to an RFP.

**Proposer:** A Private Entity, including any division or affiliate of the Private Entity, which has submitted an LOI or Proposal in order to participate in a procurement of a Service Contract PPP.

**Public-Private Partnership or PPP:** A contractual relationship between the LA DOTD and one or more Private Entities that requires the Private Entity to Develop or Operate all or part of a Transportation Facility or multiple Transportation Facilities.

**Qualifying Transportation Facility:** One or more Transportation Facilities Developed or Operated by a Private Entity pursuant to Louisiana R.S. 48:2084 *et seq.*

**Request for Proposals or RFP:** A request for submittal of a Proposal from Private Entities for a Service Contract PPP.

**Service Contract:** A contract entered into between the LA DOTD and a Private Entity pursuant to Louisiana R.S. 48:2084 *et seq.*

**Transportation Facility:** The first phase of new managed lanes on I-12, which is comprised of HOV lanes from the I-10/I-12 split in East Baton Rouge Parish to east of LA 447 in Livingston Parish, Louisiana, Developed and Operated by a Private Entity pursuant to Louisiana R.S. 48:250.4 and Louisiana R.S. 48:2084 *et seq.*

### 3.0 Legislative Approval

In accordance with Louisiana R.S. 48:250.4(A), prior to receiving approval from the House and Senate Transportation, Highways, and Public Works Committees of the Louisiana State Legislature, the Secretary of the LA DOTD (the “Secretary”) is required to determine that a PPP is in the best interest of the taxpayers. The Secretary transmitted this determination to the House and Senate Transportation, Highways, and Public Works Committees on June 10, 2020, and met with the committees on June 11, 2020, to obtain approval for the solicitation of and award of a Service Contract for the Project.

### 4.0 Communications

Once a Letter of Interest (“LOI”) is submitted in response to the NOI, potential Proposers shall comply with the following prohibitions related to communications about the Project and procurement. Communication includes face-to-face, telephone, facsimile, electronic-mail (“E-mail”), or formal written communications.

The rules are designed to promote a fair, unbiased, legally defensible procurement process. The LA DOTD is the single source of information regarding the Project and procurement. The specific rules are as follows:

- A) Contact between the Proposers and the LA DOTD must only be through [P3.I-12ManagedLanes@la.gov](mailto:P3.I-12ManagedLanes@la.gov). Until issuance of the RFP, the only communication considered by the LA DOTD will be E-mail submitted in accordance with this Section 4.0(A);

- B) The Proposers shall not contact LA DOTD employees, including, department heads, members of the evaluation and selection organization, and any official regarding the Project except as stated in Section 4.0(A);
- C) The Proposers shall not contact stakeholder staff or any official regarding the Project or procurement, unless explicitly authorized by the LA DOTD;
- D) Any communication determined to be improper under this Section 4.0, at the sole discretion of the LA DOTD, may result in disqualification;
- E) Any official contact regarding the Project and procurement will be disseminated from the E-mail address identified in Section 4.0(A); and
- F) The LA DOTD will not be responsible for any verbal communication or any other information or contact that occurs outside the official communication process specified herein.

## **5.0 Procurement Process**

The LA DOTD will use a one-step solicitation process for this Service Contract PPP, including the issuance of an RFP to Proposers that have submitted an LOI and resulting in the selection of the successful Proposer to enter into a Service Contract with the LA DOTD.

### **5.1 Notice of Intent**

Prior to issuing an RFP, the LA DOTD will issue an NOI, which will include a brief description of the Project, an announcement regarding how to obtain the RFP, and such other matters as the LA DOTD may deem advisable to include therein.

The LA DOTD will post the NOI on its web site, and may elect to furnish the RFP directly to Private Entities that the LA DOTD believes may be interested in participating in the Service Contract PPP.

### **5.2 Request for Proposals**

After the deadline for submission of LOIs, the LA DOTD will issue an RFP to each Private Entity that submitted an LOI.

#### **5.2.1 Content**

The RFP will contain the following information:

- A) Qualifications and experience of the Proposer on Projects of a similar size and complexity;
- B) Technical information and documentation related to the Transportation Facility and Project;
- C) The requirements for Proposal submission;

- D) The evaluation factors that will be used to determine the successful Proposer and their relative importance, including, but not limited to the evaluation factors listed in Section 5.2.4;
- E) The reservation of the right to hold oral presentations with Proposers and, if needed, interviews with key personnel, including the right to short-list to a number disclosed in the RFP prior to oral presentations;
- F) The proposed terms of the Service Contract;
- G) The deadline for submission of Proposals;
- H) Procedures for any competitive dialogue between the LA DOTD and Proposers, whether written or verbal;
- I) Procedures for an Alternative Technical Concept (“ATC”) process;
- J) List of firms with a conflict of interest;
- K) Price Proposal requirements; and
- L) Other information necessary to submit a Proposal.

In addition, the RFP may require Proposals to address the feasibility of Developing and Operating the Project, conceptual or preliminary design and engineering, and schedule information.

### **5.2.2 Evaluation Process**

The LA DOTD will evaluate Proposals based on the evaluation factors and in accordance with the procedures set forth in the RFP.

During the evaluation, the LA DOTD may enter into discussions with one or more Proposers in order to clarify and, potentially, receive Proposal revisions from those Proposers.

### **5.2.3 Basis of Selection**

The basis of selection will be best value, based on price and other factors, which may include, but are not limited to, the following:

- A) The proposed price;
- B) General reputation, industry experience, and financial capacity of the Proposer;
- C) Proposed design of the Qualifying Transportation Facility;
- D) Eligibility of the facility for accelerated selection, review, and documentation time lines under the Guidelines;
- E) Local citizen and government concerns;
- F) Benefits to the public;
- G) Compliance with a Disadvantaged Business Enterprise (“DBE”) participation plan or good faith effort to comply with the goals of such a plan;
- H) Plans to employ local contractors and residents; and
- I) Other factors deemed appropriate by the LA DOTD.

Upon completion of the evaluation, the LA DOTD may select a Proposer to enter into the Service Contract without negotiations, or select one or more Proposers to enter into negotiations for the Service Contract. The LA DOTD may at any time, in its sole discretion, reject all



Proposals and re-start the procurement process, reject all Proposals and terminate this procurement, or terminate the procurement and re-procure the Project, whether as a PPP or otherwise. Termination of this procurement prior to award of a Service Contract shall in no way limit LA DOTD's rights to re-procure the Project.

## **6.0 Negotiations and Approval**

After selection of the best value Proposer, the LA DOTD may enter into negotiations with the successful Proposer, approve the proposed Service Contract in accordance with Section 6.2 and execute the Service Contract with the successful Proposer.

### **6.1 Negotiations**

If the LA DOTD selects a Proposer to enter into negotiations for the Service Contract, the parties will enter into limited negotiations. If the parties are unable to reach agreement, negotiations with the selected Proposer will be terminated, and the LA DOTD may then undertake negotiations with the second ranked Proposer. If the LA DOTD and second ranked Proposer are unable to reach agreement, the LA DOTD will terminate negotiations with that Proposer and undertake negotiations with other Proposers in the order of their rankings until an agreement is reached or cancel the procurement, at the LA DOTD's sole discretion.

### **6.2 Approval and Execution**

After the completion of negotiations and the public hearing discussed in Section 7.1, the LA DOTD will approve the selected Proposal and execute the Service Contract with the successful Proposer. If the LA DOTD opts to forego negotiations with the successful Proposer, the LA DOTD will approve the Service Contract with the successful Proposer solely determined on the evaluation of Proposals and after the completion of the public hearing discussed in Section 7.1.

## **7.0 Proposal Comment Period**

Prior to execution of the Service Contract, certain affected jurisdictions and the public will have the opportunity to comment on the successful Proposer's Proposal.

### **7.1 Committee Meeting**

Prior to execution of the Service Contract, the LA DOTD will submit the selected Proposal to the House and Senate Transportation, Highways, and Public Works Committees to conduct a public hearing.

### **7.2 Affected Local Jurisdictions**

Prior to execution of the Service Contract, the successful Proposer is required to submit a copy of its Proposal to each Affected Local Jurisdiction for consideration of the PPP's compatibility with local comprehensive transportation plans. The Affected Local Jurisdiction will submit written comments regarding the proposed PPP's compatibility directly to the LA DOTD.

### **7.3 Port Facilities**

If any project is to be located within the jurisdiction of an existing port commission, port, harbor and terminal district, or the offshore terminal authority, the mutual written agreement of the affected entity is required before the LA DOTD executes the Service Contract.

### **8.0 Conflicts of Interest**

It is the intent of the LA DOTD to maximize competition on PPPs, while ensuring open and fair competition. To accomplish this, the LA DOTD will include a list of firms in the RFP that it determines to have a conflict of interest.

#### **8.1 Participation on More than One Proposer Team**

To ensure a fair procurement process, a Proposer and its Principal Participants are not permitted to participate, in any capacity, on another Proposer's team during the course of the procurement. Any Proposer or Principal Participant of a Proposer that submits a Proposal but is not selected as the successful Proposer may participate on the successful Proposer's team after execution of the Service Contract.

Failure to comply with the prohibition on participation by a Proposer or any Principal Participant on more than one Proposer's team may render the Proposer ineligible to participate in the procurement.

#### **8.2 Organizational Conflicts of Interest**

A potential organizational conflict of interest may occur where consultants and/or subcontractors that assisted the LA DOTD in the preparations of any procurement documents will not be allowed to participate as a Proposer or a member of a Proposer. The firms determined to have a potential organizational conflict of interest for this Project will be identified in the RFP.

The LA DOTD may determine that there is no organizational conflict of interest for a consultant or subcontractor under the following circumstances:

- A) Where the role of the consultant or subcontractor was limited to provision of preliminary design, reports, or similar "low level" documents and did not include assistance in the development of the procurement procedures or evaluation factors for the RFP; and
- B) Where all documents and reports that were delivered to LA DOTD by the consultant or subcontractor are made available to all Proposers in the RFP.

Any firm with an active contract with the LA DOTD for any work related to the Project is ineligible until the contract work is completed, at the sole discretion of the LA DOTD.

### **8.3 Other Ineligible Firms**

In addition, any firm that is rendered ineligible through any state or federal action shall be ineligible to participate with any Proposer in the procurement of the PPP. A Proposer must not submit a Proposal, nor will a Proposal be considered, if the Proposer or any Principal Participant of the Proposer is on the LA DOTD's list of Disqualified Contractors or Consultants or is debarred by the LA DOTD, any other agency of the State of Louisiana, or the federal government on the date of submission of the Proposal or on the date of award.

### **9.0 Confidentiality**

Until execution of a Service Contract or a determination that a Service Contract will not be executed, the procurement records will remain confidential. After execution of the Service Contract or a determination that a Service Contract will not be executed, the LA DOTD will make available, upon request, procurement records in accordance with the Public Records Law (Louisiana R.S. 44:1 *et seq.*), unless the LA DOTD has entered into a confidentiality agreement pursuant to Louisiana R.S. 48:2084(F). (*See also*, Section 9.3.)

### **9.1 Ownership of Documents**

All written correspondence, exhibits, photographs, reports, printed material, tapes, electronic disks, and other graphic and visual aids submitted to the LA DOTD during the procurement, including any part of Proposals, are upon their receipt by the LA DOTD the property of the State of Louisiana, may not be returned to the submitting parties, and are subject to the Public Records Law.

The LA DOTD and its agents, representatives, consultants, officers, or employers will not be liable to a Proposer or one of its team members for the disclosure of all or a portion of a document or any other information submitted during the course of a procurement.

### **9.2 Information Release**

No information regarding the contents of any Proposal or evaluation thereof will be released without the prior written authorization of the Secretary, except in accordance with applicable law.

### **9.3 Trade Secrets, Confidential, Privileged, and Proprietary Information**

In accordance with Louisiana R.S. 48:2084(F), the LA DOTD is required to take appropriate action to protect trade secrets and other confidential, privileged, and proprietary information received from a Private Entity, including, but not limited to, information exempt from disclosure under the federal Freedom of Information Act or the Louisiana Public Records Law. To this end, the LA DOTD may enter into confidentiality agreements in connection with any Proposal or Service Contract.